

100 GENERAL PROVISIONS

101 Definitions and Terms

101.01 General. Add:

Consistent with ODOT CMS these specifications are written to the Bidder before award of the Contract and to the Contractor after award of the Contract. The sentences that direct the Contractor to perform Work are written as commands.

Amend State of Ohio Specification to add:

As defined in Section 101.03, change to the City Manager all references to the Director, the Director of Transportation, the Assistant Directors of Transportation, the Deputy Director of the Division of Construction, the Deputy Director of the Division of Operations, the Deputy Director of the Division of Planning and Design, the Deputy Director of the Division of Rail Transportation Development, the Deputy Director of the Division of Urban Mass Transportation, the Deputy Director of the Division of Water Transportation, the Engineer of Bridges, the Engineer of Construction, the Engineer of Maintenance, the Engineer of Tests, or the Chief of the Bureau of Aviation.

As defined in Section 101.03, change to Engineer all references to District Construction Engineer, Final Inspector, and District Deputy Director.

As defined in Section 101.03, change to the City all references to the State, the State of Ohio, the Department, the Department of Transportation, or the Transportation Department.

Apply all references to Sections of the Ohio Revised Code (ORC) or Director's Journal Entry to the applicable Sections of the Cincinnati Municipal Code, which will prevail.

101.02 Abbreviations. Add:

GCWW - Greater Cincinnati Water Works.

101.03 Definitions.

Completion Date. Substitute: "Substantial Completion" for "Completion".

Add:

Addenda. Corrections to bid documents sent out by the City's Purchasing Department.

City. The City of Cincinnati, acting through the City Manager or the designated representative of the City Manager or independent board or commission and the head of the department or division directing the work.

City Manager. The City Manager of the City of Cincinnati acting in the official capacity on behalf of the City of Cincinnati, or a duly authorized agent.

City of Cincinnati Purchasing Department. The Purchasing Agent for the City.

GCWW Distribution Storage Yards. GCWW material storage facilities at 3845 Eastern Avenue and 4747 Spring Grove Avenue, Cincinnati, Ohio.

GCWW Inspector. The Greater Cincinnati Water Works Inspector acting in behalf of the Director of the Water Works.

GCWW Plans. Plans, profiles, cross-sections, working drawings, detail drawings, and tabulated laying schedules approved by the GCWW, which show the locations, character, dimensions, and details concerning the construction of water mains, appurtenances, and associated work.

GCWW Standard Drawings. The City of Cincinnati, Department of the Water Works Engineering Division Standard Drawings available from the Director of Water Works Engineering Records Section, 4747 Spring Grove Avenue.

GCWW Director. The Director of Water Works acting in the official capacity as the duly authorized agent of the City Manager.

Emergency. Any situation or condition that constitutes, in the opinion of the City, such a threat to people or property that warrants action by the City without notice to the Contractor. The City will provide written declaration of emergency to the Contractor after the fact and within one week of the Contractor's request.

Laboratory. Delete this section and substitute:

A reputable testing laboratory delegated by or acceptable to the City Manager for rendering testing and inspection services on a contract where these Specifications govern.

Project. Delete this section and substitute:

The specific section of the work together with all appurtenances and construction to be performed thereon under the Contract.

Add:

Public Works Inspector. Individual assigned by the Engineer to administer the Contract or permit.

Right-of-Way. Delete this section and substitute:

A general term denoting land, property, or interest therein, acquired for or devoted to a street. City-owned or dedicated property for passage of the public.

Add:

Rules and Regulations of the GCWW "Greater Cincinnati Water Works Laws, Ordinances, Rules and Regulations" available from the Superintendent of the Commercial Division, 4747 Spring Grove Avenue.

Rules and Regulations of the City Stormwater Management Utility. "Cincinnati Stormwater Laws, Ordinances, Rules and Regulations" available from the City Stormwater Engineer, 1600 Gest Street, Cincinnati, OH 45204-2022.

Street. Delete this section and substitute:

Street means Street as defined in Section 721-1-52 of the City of Cincinnati Municipal Code.

Add:

Standard Drawings. The City of Cincinnati, Department of Transportation and Engineering, Traffic Engineering Division and Engineering Division; the City of Cincinnati, Metropolitan Sewer District; Greater Cincinnati Water Works; and the City of Cincinnati, Metropolitan Sewer District, Division of Stormwater Management may, from time to time, publish drawings that describe standard requirements, details, and materials incorporated as applicable to the Contract or permit.

Street Restoration Book. Rules and regulations issued by the City Engineer that regulate activities and materials within the street.

Subcontractor. Delete this section and substitute:

An individual, firm or corporation to whom the Contractor sublets part of the Contract to be performed on the job site, who prior to such undertaking receives written consent of the City Manager through a Form 208 Subcontractor Approval Form.

Add:

Subdivision Manual. Rules and regulations issued by the City Engineer that regulates the engineering design of streets for private subdivisions or developments.

102 Bidding Requirements and Conditions

102.01 Prequalification of Bidders. Delete this section.

102.05 Examination of Bid Documents and Project Site and Submission of Prebid Questions. Delete the last paragraph regarding submitting a Prebid Question.

102.06 Preparation of Bids. Delete this section and substitute:

Submit the Bid upon the forms contained in the "Bid Document". Specify the amount of labor and materials, in figures, in the columns provided for that purpose, for each unit of each pay item for which a quantity is given and also show the sum of labor and materials costs, in figures, in the column provided for that purpose on the forms. List the unofficial total of the bid on the line provided for that purpose.

Place the required signature in ink in the space provided.

102.07 Duty to Notify of Errors in Contract Documents. Substitute: City's Purchasing Agent for Department. Delete the second sentence of the first paragraph.

102.09 Proposal Guaranty. Delete this section and substitute:

The City will not consider any proposal unless it accompanies a bid surety or certified check drawn on a solvent bank in an amount not less than ten percent of the Bidder's Proposal. In no event shall the amount of the Proposal Guaranty be less than \$500.00. Facsimiles may satisfy this requirement, provided that bidder provides substantive protection as specified herein.

102.11 Withdrawal of Bids. Delete this section and substitute:

A Bidder may withdraw or modify the Contractor's Proposal, provided the written request is in the hands of the City Purchasing Agent by the time limit set for receiving Proposals. Mark such communications so as to indicate their nature. The City Purchasing Agent will read them aloud at the bid reading before opening any of the Proposals. When opening any Proposal affected by such a communication, the City Purchasing Agent will return it to the Bidder or modify it in accordance with the communication.

102.12 Combination Proposals. Delete this section and substitute:

No combination bid will be considered except as set forth in bid document.

102.14 Disqualification of Bidders. Delete paragraphs A., I., and M.

103 Award and Execution of Contract

103.01 Consideration of Proposals. Delete first paragraph and substitute:

The City will open and read the Proposals, then check the separate prices bid for labor and material against the total price bid for each item. If any error exists, the total combined unit price will be used, except in cases where the Bidder plainly indicates his intent to be otherwise. However, the City reserves the right to reject any bid in which, in its opinion, the Bidder's intent is uncertain. The City will check the unit prices, make extensions and compute and compare totals.

103.02 Award of Contract. Delete this section and substitute:

The award of the Contract will be made to the lowest or best Bidder whose Proposal complies with all the requirements prescribed. In no case will the City award the Contract until making all necessary investigations as to the responsibility of the winning Bidder.

The City Manager reserves the right to require the Bidder to present satisfactory evidence that the Bidder has been regularly engaged, as either principal or superintendent, in the business of construction work similar to that proposed herein, and to require the Bidder to present satisfactory evidence that the Bidder is fully prepared with the necessary capital, material, machinery and equipment to conduct the work to be contracted to the satisfaction of the City, and to begin promptly when so ordered. Failure to have performed satisfactorily any Contract awarded to the Bidder shall be sufficient reason for rejection of the Proposal.

103.05 Requirement of Contract Bond (Performance Surety). Delete this section and substitute:

Within ten days after receiving notice of the award and before entering into Contract, furnish a Contract Bond in the full amount of the Proposal, which bond shall cover the entire Contract including the correction and repair period required under 109.12. Execute the Contract Bond on the form contained in the Contract. Agents of bonding companies must furnish evidence of their power of attorney, bearing the seal of the company authorizing them to execute the particular type of bond to be furnished.

If, at any time after the approval of the Contract Bond and the execution of the Contract, the City shall deem the surety or sureties upon the bond to be unsatisfactory, or if for any reason the bond shall cease to be adequate security for the City, within five days after notice from the City to do so, furnish a new or additional bond which shall be adequate and satisfactory to the City.

The City will make no further payment under the Contract to the Contractor unless and until Contractor furnishes such new or additional City approved bond.

103.06 Execution of Contract. Delete this section and substitute:

Sign and return the Contract, together with the Contract Bond and other required Contract Documents, within ten days after the Bidder receives notice of the Contract award. Provide required signatures as follows:

Corporation: If a corporation, the Contractor must sign the Contract with full name of the corporation, followed by the signature of the President, Vice-President, or persons authorized to bind it in the matter. Should other than the President or Vice-President sign the Contract, the company must evidence authorization to bind by attaching a certified copy of the extracts of the minutes of this corporation.

Partnership: If a partnership, the Contractor must give the full name of all the partners composing the same, and one or more of the partners must sign the Contract in the following manner:

"John Jones and James Smith, d.b.a.
Jones-Smith Company, by John Jones, a partner."

Sole Ownership: If sole ownership, the Contractor should sign the Contract in the following manner:

"John Jones, Sole Owner."

Consider no proposal binding upon the City of Cincinnati until the execution of the Contract. Subject to the applicable provisions of law, the Contract shall be in full force and effect only from and after the date the City tenders or delivers a fully executed and approved counterpart thereof, or both, to the Contractor or the Contractor's duly authorized agent or representative.

103.07 Failure to Execute Contract. Add:

Failure to execute a Contract, for any reason, will be considered in the evaluation and award of future contracts.

104 Scope of Work

104.01 Intent of the Contract Documents. Add

104.011 As Per Plan Designation. The absence of an "As Per Plan" designation on some or all item or items description(s) in the Contract Documents for which there are clear and controlling plan notes does not relieve the Contractor of the responsibility to read, bid and construct those particular items in accordance with the governing plan notes. Read or interpret the item descriptions in the bidding proposal with the governing plan notes and the ODOT CMS and the City Supplement. A claim based upon an "order of precedence" basis will be denied. Request clarification of conflicts, either real or perceived, between item descriptions and the governing plan notes through the pre-bid process.

104.02 Revisions to the Contract Documents.

B. Differing Site Conditions. Add:

The City will grant no adjustment for rock within six feet (1.8 m) of the surface before excavation.

In ascertaining whether subsurface conditions are unusual, infer that the Contractor has observed the local geology with the level of expertise described in the first paragraph of 108.05.

D. Significant Change in Character of Work. Delete Section 2.

Add:

104.02 H 5. Quantity Overruns. Closely monitor Pay Item quantities as the work progresses. Obtain prior written authorization to exceed the Contract Amount for any Pay Item that might exceed the original Contract quantity. The City will pay for work completed and accepted in place at the original unit price up to the lesser of 110 percent of the original Contract quantity or the original Contract Pay Item extended total, plus \$5,000. The City will make no further payment for work performed above and beyond that amount unless the Contractor has obtained prior written approval.

Add:

104.031 Rights of Salvage Material Found. The City reserves ownership of all materials including but not limited to: old macadam stone, curbs, crosswalks, flagging, gutters, granite block and paving bricks. If the Special Provisions, the General Notes, or the Detailed Provisions of the Contract indicate that these items are to be salvaged; then excavate, segregate, clean, stack on pallets or other appropriate device and haul to a City Facility. Be careful not to damage the material.

If during the excavation the Contractor finds artifacts that the City wishes to salvage, City will notify the Contractor of such, and the Contractor will excavate, segregate, clean, stack on pallets and deliver to a City Facility. Any item of historical or archeological interest is also the property of the City, and Contractor will protect and reserve as directed by the Engineer. Unless otherwise stated, compensation for this work will be per section 109.05.

104.04 Cleaning Up. Add:

As soon as portions of the work are ready for use, remove all dirt and rubbish, and clear all materials, forms, false work, temporary structures and equipment. Clean out all sewers, drains, inlets, manholes and other underground lines and structures built by the Contractor or affected by the Contractor's work.

During final cleanup, give special attention to cleaning out storm water inlet chambers. Remove all asphalt, concrete and other material deposited in the chamber or inlet connection. Remove and reinstall all manhole lids and inlet grates to ensure that none have been sealed to their frames

104.05 Contractor Notification, Continuation of Work, Disputes and Claims.

Delete this section and substitute:

A. General. Follow this process in order to resolve disputes on the project and to seek additional compensation and/or Contract time from the City in the form of an administrative claim.

B. Process. Exhaust this process prior to filing an action in the Ohio Court of Claims. These procedures do not compromise the Contractor's right to seek relief in the Ohio Court of Claims. File a complaint in the Ohio Court of Claims within 60 days after the completion of all extra-judicial dispute resolution requirements if the claim is not resolved.

C. Issues Covered. Disputes will include disagreements, matters in question, and differences of opinion between City personnel and the Contractor. Claims are disputes that are not settled in the dispute resolution process for which the Contractor has documented costs or time incurred as a result of such disputes.

Disputes and claims by subcontractors and suppliers may be pursued by the Contractor on behalf of subcontractors or suppliers. Disputes and claims of subcontractors and suppliers against the Contractor will not be reviewed by the City. Disputes and claims by subcontractors and suppliers against the City but not supported by the Contractor will not be reviewed by the City.

Disputes and claims subject to review by the City include:

1. Interpretation of specifications, standard drawings, plans, the proposal, working drawings, change orders, and orders by City personnel having authority over the project.
2. Differing site conditions as defined in 104.02 B.
3. Cost and time incurred by:
 - a. Suspension of the work under 104.02 C.
 - b. Significant changes in scope of work under 104.02 D.
 - c. Utility interference with the work under 105.07 and 4A notes.
 - d. Extra work ordered under 104.02.
 - e. Acts or inaction of the City or other government agencies.
4. Adequacy and constructability of the plan design.
5. Contract time extensions due to weather, shortages of labor, equipment or materials, or other causes beyond the Contractor's control.
6. Other subjects mutually agreed upon by the City and Contractor to be under the scope of the dispute resolution and claims process.

D. Early Notice Required. Give written notice of any circumstance or dispute on the project that may result in a claim. Give early notice by the end of the second working day following the discovery of the occurrence of the circumstance or dispute. Maintain records on the Superintendent's daily report of the additional labor, equipment, and materials used on the disputed work or made necessary by the circumstance. Begin record keeping when the project personnel are aware of the circumstance or dispute. Submit these records on a weekly basis. Failure to give early notice or keep and submit cost records will be a sufficient reason for the City to deny the claim.

E. Continuation of Work. Continue with all project work, including that which is in dispute. The City will continue payments for Contract work.

F. Process Steps in Detail. All parties in the dispute must follow the specified steps. Personnel involved in second or third tier review will not consider a dispute until it has been properly reviewed by the previous tier. Do not contact City personnel involved in a second or third tier review until the dispute has been thoroughly reviewed by the previous tier.

1. Step 1 of Dispute Resolution (Project Level). The Construction Engineer will meet with the Contractor's Superintendent within two working days of receipt of any early notice. They shall review all pertinent information and Contract provisions and negotiate an equitable settlement according to the Contract Documents. If settlement is not achieved, the dispute is moved to Step 2.

2. Step 2 of Dispute Resolution (Principal Engineer Level). If the dispute is not resolved in Step 1, request a meeting with the Principal Construction Engineer within five working days of completion of Step 1. Personnel from the Contractor's headquarters and the Principal Construction Engineer shall meet to consider the dispute. The City and Contractor's personnel shall review the information on the dispute presented by the personnel involved in Step 1 and

negotiate an equitable settlement according to the Contract Documents. If settlement is not achieved, the dispute is moved to Step 3.

3. Step 3 of Dispute Resolution (City Engineer/Chief Engineer Level). Send the City/Chief Engineer a *Notice of Intent to File a Certified Claim* within 14 calendar days of the completion of Step 2. State in the notice the Contractor's request for a hearing on the claim or for an acceptable alternative dispute resolution technique. Provide documentation as required in 110.07. Certify the claim, under oath, in writing. Attest to the following in the certification:

- A. The claim is made in good faith.
- B. To the best of the Contractor's knowledge, all data offered to support the claim is accurate and complete.
- C. The claim amount accurately reflects the Contractor's actual incurred costs.

Notarize the claim certification, pursuant to the laws of the State of Ohio. The following is an example of the correct form for a claim certification:

(The Contractor) certifies that this claim is made in good faith, that all supporting data is accurate and complete to the best of (the Contractor's) knowledge and belief, and that the claim amount accurately reflects the Contract adjustment for which (the Contractor) believes the City of Cincinnati is liable.

(The Contractor)

By: _____
(Name and Title)
Date of Execution: _____

The City Engineer/Chief Engineer will schedule a hearing on the dispute within 15 working days of receiving a certified claim and acceptable dispute documentation, or as otherwise agreed to by the City Engineer/Chief Engineer and the Contractor. The Contractor's position on the dispute will be presented by executive officers of the Contractor (maximum three). The Principal Engineer will present the reasons the dispute was not resolved. The City Engineer/Chief Engineer will issue a written decision on the dispute within 15 working days of the hearing.

The City shall pay interest on any amount found due on a claim that is not paid within 30 days of the City's receipt of the certified claim. Such interest shall be paid to the Contractor for the period beginning on the thirty-first day after the City's receipt of the certified claim, and ending on the day that the payment of the amount due is made. Interest payments provided for in this provision shall be at the rate per calendar month that equals one-twelfth of the rate per annum prescribed by section 5703.47 of the *Ohio Revised Code* for the calendar year that includes the month for which the interest charge accrues.

G. Claim Documentation Requirements. Provide an original dispute document that clearly and in detail gives the following information for each item of additional compensation and time extension requested:

1. A narrative of the disputed work or project circumstances at issue, with sufficient description and information to enable understanding by a third person who is not familiar with the project. Include the dates of the disputed work and the date of early notice.
2. References to the applicable provisions of the plans, specifications, proposal, or other Contract Documents. Include copies of the chief provisions in the claim documents.
3. The dollar amount of additional compensation and length of Contract time extension being requested.
4. The cost and schedule analysis and supporting documents that were the basis for the requested compensation and time extensions stated in C (above).
5. Copies of relevant correspondence and other pertinent documents.

Identify the dispute document by Contract Number, Contractor name, Subcontractor, or Supplier (if involved in the dispute), and dispute number.

H. Alternative Dispute Resolution (ADR). The Contractor may request ADR in lieu of filing action in a court of claims. The City may agree to arbitration or mediation in the manner in which those methods are practiced by the City and allowed by law.

The City will coordinate the following: the agreement of the parties to the ADR method; the selection of a neutral third party or technical expert; and the equal sharing of the fees of the neutral third party or technical expert. The City will obtain a written agreement, signed by both parties, that establishes the ADR. The neutral third party or technical expert will have complete control of the claim upon execution of the ADR agreement.

I. Agency(ies) Excluded from This Section's Provisions. The provisions of this section (Section 110 – Dispute Resolution and Administrative Claim Process) shall not apply to contracts let by GCWW. The provisions shall apply, however, to GCWW pay or Contract items included in Contracts let by other agencies.

105 Control of Work

105.02 Plans and Working Drawings. Add to the second paragraph:

Leave a 3-1/2 inch by 3-1/2 inch blank space for the review stamp next to the title block of all working drawings, unless otherwise directed by the Engineer.

Add:

105.021 Record Drawings/As-Built Drawings. Keep one complete set of plans and specifications at the site while working, designated 'Project Record Set.' Include all corrections,

addenda, changes, revisions, notices and any other modifications. Submit the Project Record Set to the City after completion and before applying for final payment. Note all things exposed during construction, including utility locations, in the Project Record Set. Include in the Project Record Set all working drawings used during construction and any other catalog cuts or instructions needed.

In addition, engage the services of a Professional Surveyor, registered in the state of Ohio, to survey all new/revised/remodeled Stormwater Management Utility (SMU) facilities and create a record set especially for SMU consisting of as-constructed information drawn in red ink on mylar copies of the final set of plans. Provide the copy of the plans on mylar. Identify these drawings as intended for SMU and submit to SMU through the Contracting Agency. Include the Professional Surveyor's signed and sealed certification that the drawings represent the actual locations, elevations, etc. of the constructed facilities.

105.05 Cooperation by the Contractor. Delete the first paragraph and substitute:

The City will provide five sets of plans and specifications to the Contractor at no cost, unless otherwise indicated in the contract documents. It is the Contractor's responsibility to obtain the latest Standard Drawings referenced in the Plans or that are otherwise applicable.

Add:

105.071 Working Near Street Trees. Before commencing work when working within 15 feet (3.6 meters) of a tree, obtain a permit from the City's Urban Forestry Section. Contact them at 861-9070, 8:00 A.M. to 5:00 P.M., Monday through Friday.

Perform the work in such a manner as to minimize damage to existing street trees. The base of a public tree will not be cut more than necessary to accomplish the street rehabilitation work (the base being the first six inches (152 mm) above ground and the first three inches (76 mm) below ground).

Do not cut roots over 4-1/2 inches (114 mm) in diameter without a field inspection and written approval from an Urban Forestry representative. Where there is root cutting within 15 feet (3.6 meters) of a public tree, apply a high-phosphorus fertilizer in an attempt to repair the damage. Mix an appropriate product similar to Mag-Amp or Super-Phosphate into the backfill and apply it at a rate of six pounds (2.7 kg) per tree. The Engineer must approve the fertilizer used.

During the course of construction, protect branches extending over the street and sidewalk that are higher than 14 feet and 8 feet, (4.3 meters and 2.4 meters) respectively. The Contractor is responsible for any damaged or broken limbs, and bears the cost of any reasonable correction the Urban Forest Manager deems necessary.

Do not store any material or equipment in the sod area under or near existing trees. The Engineer shall give prior approval of an area before the Contractor uses it for the storage of any material or equipment.

In the event of failure to comply with the above procedures, the Contractor may assume liability for the affected tree as the law directs.

The City shall make no payment for the special requirements involved in "Working Near Street Trees"; therefore, include all costs under other bid items of the Contract.

Add:

105.072 Loop Detectors. The work may affect traffic loop detectors at various locations. Exercise extreme care when working in an area containing detectors.

The City and Contractor shall inspect the signalized intersections prior to the start of work to locate detectors and determine whether or not the detector can be salvaged.

If the City and Contractor determine that the detector must be removed, the City of Cincinnati Traffic Engineering forces will install a new detector. Coordinate the Contractor's operations with the City forces to reduce the out-of-service time of the detector. Contact Traffic Engineering at 352-5272 to coordinate these activities. Installation of new loop detectors will involve no cost to the Contractor. The City will grant no additional compensation to the Contractor for complying with this provision or any other rearrangement of work involving loop detectors.

The City may assess against and back-charge against the Contract or permit for any damage to loop detectors the Contractor causes.

105.08 Cooperation Between Contractors. Add:

If the bid documents call for assignment of Subcontractors, execute pertinent agreements needed to consummate assignments.

105.15 Failure to Maintain Roadway or Structure. Add:

In addition, if the conditions constitute a hazard to the public, the City may, without notice to the Contractor, take measures it deems appropriate to mitigate the hazard and charge the Contractor all associated costs. The Contractor may not make a claim for damages in these circumstances.

105.16 Borrow and Waste Areas. Add at the end of the second paragraph:

Materials deposited off-site without the required approvals may be ordered removed and properly disposed of without additional compensation.

Add at the end of the fourth paragraph:

Apply, pay for and obtain all required permits, including cut/fill permits.

Add at the end of the eighth paragraph:

Provide written certification at completion of restoration that the off-site material disposal area(s) has been restored to the property owner's satisfaction, and that all required permits have been applied for, obtained, paid for and properly closed out.

105.17 Construction and Demolition Debris. Add at the end of the fourth paragraph:

Unless the Contract Documents provide otherwise, the City bears all costs for analysis and disposal of any contaminated materials the Contractor encounters during the work. Cooperate with the City if such material is encountered.

Add:

105.20 Construction Stakes, Lines and Grade. Unless otherwise stated, the City Surveyor will set all line, grade, slope and location stakes necessary for the proper prosecution of the work. The City Surveyor will perform layout work during regular business hours only, Monday through Friday 7:30 A.M. to 4:00 P.M.; adjust scheduled work accordingly. Notify the Engineer at least two regular business days in advance prior to needing layout for construction purposes, and furnish at the Contractor's own expense all stakes, spray paint and "PK" nails necessary for their placement. Provide proper staking materials as required by the Engineer, which could include Grade Oak Stakes, Pine Guard Stakes and Slope Stakes. Preserve all monuments, witnesses, stakes, paint marks and other construction control, and if the Contractor carelessly or needlessly destroys any of the stakes, the City shall charge the cost of replacing them against the Contractor and deduct such amounts from his final payment. Provide any cleaning or traffic control needed to perform such layout. Review line, grade, and elevation stakes placed, immediately notify the Engineer of any conflicts or possible errors.

Construct the work in strict accordance with the Engineer's stakes and paint marks, and take full responsibility for conformity and agreement of the work with the stakes and paint marks as originally set by the Engineer.

Unless otherwise stated, the Contractor's costs associated with this item are incidental to Contract items.

106 Control of Material

106.02 Samples, Tests, Cited Specifications. Delete this section and substitute:

All materials must conform to work requirements. The Contractor has the obligation to demonstrate material conformance to work requirements.

All materials are subject to sampling, inspection and testing. Provide and deliver, at no expense to the City, any samples needed for testing. Include samples in the work if suitable and applicable.

Submit Certification of Material Compliance for any material before incorporating in the work. Such certification shall include, at a minimum, the following:

- A. Project Name
- B. Material Description and Quantity
- C. Material Supplier Including Address, Phone Number and Contact
- D. Intended Use of the Material
- E. Location and Date of Material Production
- F. Applicable Standards, Tests, and Results Thereof

G. Statements Declaring the Material Conforms to the Contract Requirements

The costs to supply such Certificates are incidental to Contract items.

Unless otherwise stated, the City will pay for all on site testing on Public Improvement Contracts. The Contractor will bear all costs, including the City's administrative costs, associated with retesting any material that does not initially meet Contract requirements. Upon request to the Engineer, the City will provide the Contractor with copies of any test results.

106.03 Small Quantities and Materials for Temporary Application. Delete this section.

106.08 Department- Furnished Material. Delete this section and substitute:

Furnish all materials required to complete the work except as otherwise provided.

The City will make City-furnished material available to the Contractor for pickup at a City facility or some other place within the metropolitan area.

Unless otherwise specified in the Contract, the costs of handling, hauling and placing all materials after they are received are included in the Contract price for the item in connection with which they are used.

106.09 Steel and Iron Products Made in United States. Add:

This section only applies to Contracts partially or wholly funded with State and/or Federal money.

107 Legal Relations and Responsibility to Public

107.02 Permits, Licenses and Taxes.

Add:

If the Contractor desires to use water from fire hydrants during construction, obtain a permit for the use of the hydrant from Greater Cincinnati Water Works, 4747 Spring Grove Avenue. Show these permits to the Engineer before using the hydrants. The Contractor must pay Greater Cincinnati Water Works for the water so used before the City releases the Contractor's final payment.

All Contractors working within the Right-of-Way must apply for and secure a permit from the Cincinnati Department of Transportation and Engineering before starting work, unless previously obtained by the Contracting agency. If the work is under Contract with the City, there will be no cost for this permit. Any Inspector may order suspension of any unpermitted work without additional compensation to the Contractor.

107.04 Restoration of Surfaces Opened by Permit. Delete this section and substitute:

Make utility connection to all lots before Contractor places any permanent pavement, for all new subdivisions and developments the City intends to accept in the future.

Perform restoration of any street cut in accordance with the Contract provisions and the Department of Transportation's "Street Restoration Book."

Add:

107.041 Restoration of Surfaces Opened for Water Main Work. Contractor expressly understands and agrees that the unit prices bid on the various items in the Proposal includes all costs and charges for the restoration of street-paving, sidewalks, or other areas opened or disturbed in the pursuance of water main work in accordance with the Plans.

Perform all restoration in a neat and professional manner. Before the City makes final payment under this Contract, the representative of the political subdivision having jurisdiction must accept the final restored surfaces. All restoration shall conform to the following:

A. Within Corporate Limits of Cincinnati. Restoration in the streets and highways of the City of Cincinnati must conform to all of the rules and specifications as described in City Supplement **107.04**.

B. Outside the Corporate Limits of the City of Cincinnati but within Hamilton County. All restoration within this area must conform to the State of Ohio, Department of Transportation, "Construction and Material Specifications" the requirements of Hamilton County Engineer's Office or that of the appropriate agency of jurisdiction, and GCWW Standard Drawings pertaining to street restoration.

C. Special Restoration. In those cases where restoration differs from the above stated specifications, the required restoration will be detailed on the Plans and will be so noted on the Special Provisions.

107.07 Public Convenience and Safety. Add:

Conduct the work safely and assure a safe work site. The Contractor is responsible for the safety of the Contractor's employees, agents and subcontractors, City personnel and all other personnel or persons at the work site. The Contractor is responsible for the adequacy and safety of all construction methods or procedures and the safe prosecution of the work.

Add:

107.071 Site Safety Plan. File with the Engineer prior to start of work a Site Safety Plan, which at a minimum:

- A. Lists key personnel and alternates responsible for site safety along with means of contacting these personnel at all times.
- B. Names one person as a Competent Person responsible for site safety activities and includes a resume of their qualifications to be a Competent Person.
- C. Describes the risks associated with each operation conducted.

- D. Confirms that personnel are adequately trained to perform their job responsibilities and to handle the specified hazardous situations they may encounter.
- E. Describes the protective clothing and equipment personnel will wear during various site operations.
- F. Describes any site-specific medical surveillance requirements (hazardous waste or material sites only).
- G. Describes the program for periodic air monitoring, personnel monitoring, and environmental sampling, if needed (hazardous waste or material sites only).
- H. Describes the actions to be taken to mitigate existing hazards (e.g., containment of contaminated materials) to render the work environment less hazardous.
- I. Defines site control measures and includes a site map.
- J. Establishes decontamination procedures for personnel and equipment (hazardous waste or material sites only).
- K. Sets forth a Contingency Plan for safe and effective response to emergencies.
- L. Sets forth the site's Standard Operating Procedures (SOPS). SOPS are those standardized activities that use a checklist. The procedures should be:
 - 1. Prepared in advance.
 - 2. Based on the best available information, operational principles, and technical guidance.
 - 3. Field-tested by qualified health and safety professionals and revised as appropriate.
 - 4. Appropriate to the types of risk at that site.
 - 5. Formulated to be easy to understand and practice.
 - 6. Provided in writing to all site personnel who should be briefed on their use.
 - 7. Included in training programs for site personnel.

Display a copy of the Site Safety Plan at the work site at all times.

In addition, supply to the Engineer any safety information or documentation that the state or federal agency requires under law.

107.09 Use of Explosives. Delete this section and substitute:

The Director of DOTE will not permit blasting or the use of explosives on the work without written authorization from the City Manager. Fill out an "Application for Blasting Permit" from the Office of the City Engineer, Room 450, City Hall. The City Engineer will review and make recommendations to the Director. Make this application well in advance of proposed blasting operations (at least one week) to allow ample time for the necessary investigation. If the City grants permission for blasting, conduct the operations in strict accordance with the regulations attached to the "Application for Blasting Permit" and additional regulations specified herein.

Use, handle, store, and transport explosives in conformance with all applicable requirements.

107.12 Responsibility for Damage Claims, and Liability Insurance.

Add:

Furnish two unaltered copies of the official certificate of the Industrial Commission of Ohio indicating that the Contractor has paid the premiums required under the Ohio Workers Compensation Act. Furnish Ohio Industrial Commission approval as such if self-insured.

Before any work embodied in the Contract will be permitted to be performed, furnish two copies of a certificate of insurance naming the City of Cincinnati as an additional insured, as evidence that the Contractor has procured comprehensive general liability insurance. Such policy shall include the following types of insurance: Comprehensive form; premises - operations; products completed operations; contractual; broad form property damage; independent contractors; and personal injury. The standard general liability coverage for damages due to explosion, collapse, and underground property damage shall not be deleted by exclusion endorsements. Maintain such insurance coverage in not less than the following amounts: Combined single limit for bodily injury and property damage of \$1,000,000 per occurrence/\$2,000,000 aggregate. The Contractor may obtain required coverage through primary insurance or any combination of primary and umbrella insurance. In addition, the general aggregate limit shall be required on a per project basis.

The Contractor may provide insurance coverage for Subcontractors, furnishing riders to the Contractor's own general liability policy, or the Subcontractor may procure the Subcontractor's own insurance.

When the work involves the operation of trucks and/or automobiles, the Contractor must provide comprehensive automobile liability insurance with a minimum combined single limit for bodily injury and property damage of \$1,000,000 per occurrence. Include an "All Risk" Builder's Risk policy in the Contractor's required insurance which shall provide Fire and Extended Coverage, Vandalism and Malicious Mischief coverage for an amount equal to one hundred percent (100%) of the completed value of the entire project and written in the Owner's and Contractor's name. Keep such insurance in full force and effect until all work is completed and accepted by the City of Cincinnati.

In addition to the above insurance requirements, furnish, when applicable, Railroad Protective Liability and property damage liability insurance in the amount the affected Railroad requires and in accordance with the Railroad Liability Form the Federal Highway Administration prescribes in Policy and Procedure Memorandum 20-12 as amended. In addition to the above insurance requirements, provide insurance of the type and in the amounts stated above, covering the Contractor's liability under 107.14, with the City of Cincinnati as the named insured.

To be acceptable, all insurance policies must be underwritten by a company authorized to do business in the State of Ohio, having a Best's Financial Rating of Class IX or better and a Policy Holder's Rating of "A" or better.

All proof of insurance submitted to the City shall clearly set forth all exclusions and deductible clauses. The Contractor is responsible for the deductible limit of the policy and all exclusions consistent with the risks the Contractor assumes under this Contract and as imposed by law. The City's Purchasing Agent may set maximum reasonable deductible limits.

In the event that the Contractor's insurance coverage is valid for a period of time less than the period of the Contract, the Contractor must renew his insurance policies as necessary and provide new certificates of insurance to the City.

All of the insurance referred to above shall be subject to the approval of the City. Keep such insurance in full force and effect until all work is fully completed and the City of Cincinnati has accepted it.

107.13 Reporting, Investigating, and Resolving Motorist Damage Claims.

Substitute:

"Engineer" for District's Construction Office and Department's Court of Claim Coordinator.

Add:

107.22 Notification to Affected Parties.

Notify adjacent, abutting, nearby and affected persons, businesses and individuals of upcoming construction activities. Such notices may include attendance at neighborhood or community meetings, preparation, reproduction and distribution of flyers, and explanations to residents or passersby. Provide notice at least 48 hours before and as far in advance of the anticipated work as possible with due recognition of uncertainties of weather, production, and level of disruption. Conditions may require renotification.

Give to the Engineer for review, a draft copy of any written notice the Contractor prepares. Include in all such written notices a statement describing the work, identifying the disruption, stating the approximate duration and providing information relating that the work is being performed under a City Contract and to which City office the citizen may address concerns. The Engineer may direct the Contractor to print this notice on City letterhead. Use the construction company's name and telephone number on the notice.

Provide and maintain driveways and pedestrian ways to abutting properties in a safe condition. Cooperate with the affected business operators and property owners in every practical way in order to minimize disruption to their operations. Notify residents and businesses at least 24 hours in advance of when their driveways will be blocked during construction.

108 Prosecution and Progress

108.01 Subletting of Contract. Delete last sentence of first Paragraph.

Delete third and fourth paragraphs and substitute:

Within two weeks after the award of a Contract, send to the Engineer a complete list of any Subcontractors the Contractor plans to use to complete the work, along with completed Subcontractor Approval Form Purch 2004. Include proposed contract amounts and calculations showing that the Contractor plans to do at least 50 percent of the work with his own forces. Submit for approval any deviations and reason for the change that may occur during the term of the Contract. Failure to submit a complete list of subcontractors is reason to withhold future pay applications.

The City shall promptly notify the Contractor in writing if the City or the Engineer, after due investigation, has reasonable objection to and does not approve any Subcontractor. Do not enter into a Subcontract until after the City approves the Subcontractors by use of form Purch 2004.

Rental of equipment, either with or without an operator in connection with the performance of the Work under this Contract, shall not be considered subcontracting if the Contractor maintains full supervision and control over its operation and the operator's wages.

Whether the Contractor sublets or hires equipment under this Contract, he is responsible to fulfill all the terms of the Contract and provide satisfactory evidence that the prevailing wage rates are being paid to all personnel engaged on the site, whether the Contractor's own, those of a Subcontractor, or anyone directly or indirectly employed by either the Contractor or Subcontractor.

108.02 Preconstruction Conference, Partnering, and Progress Schedule. Delete A. Partnering.

108.02.B.4 Recovery Schedule. Add

No time extension will be considered without timely submittals of all schedules and updates. A request for any time extension must identify all delays (excusable and non-excusable) a description of the delay, the reason for the delay and the impact on the schedule.

108.06.C Extension to the Completion Date for Weather or Seasonal Conditions.

At the end of the last sentence in the first paragraph, replace "December 1 to April 30" with "December 15 to April 1". In the first sentence in the second paragraph, replace "December 1 to April 30" with "December 15 to April 1".

In Table 108.06-1, Change the Number of Workdays Lost Due to Weather to 3 for the month of December and remove the month of April from the table.

108.10 Payroll Records. Add:

At any time during the Contract period, the City may require the Contractor and/or its Subcontractor to submit a Form 104 or Form 104F and Form 66 certifying that wages have been paid in accordance with the Prevailing Rate of Wages provisions set forth in the Contract.

Each month during the Contract period, submit a form **PURCH 257**, Monthly Employment Utilization Report.

108.11 Post Construction Meeting. Delete this section and substitute:

After final inspection the Engineer may conduct a meeting to critique the Contract Documents (i.e., plans, proposal). The meeting will be at a time and place as determined by the Engineer. The Contractor may be asked to participate. The cost to attend this meeting is incidental to other Contract items.

109 Acceptance, Measurement, and Payment

109.01 Measurement of Quantities. Add:

For Lump Sum Items, the Engineer may request a schedule of values allocated to various portions of the Work, prepared in such form and supported by such data to substantiate its accuracy as the Engineer may require. Unless the Engineer objects, this schedule shall be used as a basis for reviewing the Contractor's Applications for Payment.

109.05.C.6 Subcontract Work. Table 109.05-2 does not apply. Use a 5% mark-up of the subcontractor force account cost.

109.05.D.2.f Home Office Overhead. Delete the first four paragraphs. Add:

The City will only pay for the Contractor's home office overhead if all work on the project is suspended at no fault of the Contractor, the length of the suspension is unknown, the Contractor's crews are put on standby, and the Contractor cannot get replacement work for the time period of the suspension.

Add:

109.051 Contract Contingency. This item is used to cover changes or additions for work directly relevant to completing the original Contract; initial estimated quantities do not include the item. The Engineer must approve in writing all expenditures against this item. The Engineer and Contractor must agree on lump sum or unit price or an authorization to proceed under Force Account before Contractor starts work. Force Account authorization must include an estimate to complete the work.

109.09 Estimates.

Add:

As a rule, the City will make no monthly payment for an amount less than \$500.00.

The City may reduce or entirely withhold partial payments if, in the opinion of the Engineer, construction is not proceeding according to the Contract, or for any other violation of the Contract, or for failure of the Contractor to comply with orders of the Engineer or pending settlement of claims or liens filed against the Contractor.

The City will pay not less than 92 percent of the estimates until 50 percent of the Work is completed, thereafter 100 percent of the estimates submitted by the Contractor and approved by the City will be paid.

Make payment requests on Contractor's invoice, form and content to be approved by the Contract Administering Agency. Submit Form No. 97S, Affidavit of General or Mechanical Branch Contractor, with every request for partial payment. Supply of forms is available from the Contract Administering agency.

Per City Ordinance No. 297 – 2002, promptly render payment to all Subcontractors. Provide with each invoice to the City on each Contract, beginning with the second invoice, proof of payment to Subcontractors, in form and content approved by the Director of Finance, evidencing that all Subcontractors have been duly paid out of the proceeds of the Contractor's payments from the City under the Contract.

109.10 Payment for Delivered Materials.

Add:

City will process no subsequent payments for construction work, up to the value of the stored material allowance, until such time that the Contractor submits an affidavit from the Supplier indicating payment was received.

109.12 Final Acceptance. Delete this section and substitute:

A. Substantial Completion. Substantial completion occurs when the City receives intended use of the project. Notify the City Project Engineer when the Contractor believes he has substantially completed the work. City shall respond to Contractor's notice, within ten days, of its acceptance or rejection of the Contractor's claim of substantial completion. Liquidated damages will not accrue beyond the date of substantial completion.

B. Punch list. Upon substantial completion, the Engineer will issue to the Contractor a written punch list of minor work required as a condition of final acceptance. The Engineer's punch list will stipulate a reasonable time, if different than 30 days, to complete the required work. **Failure of the Contractor to complete the punch list items by the stipulated term, normally 30 days, will result in an administrative fee of \$100 per calendar day for every day beyond the stipulated time period the punch list work remains incomplete.**

C. Final Inspection. Notify the Engineer when the Contractor entirely completes work and all of the Engineer's punch list items are complete including the final cleaning up and removal of all project signs. The Engineer will inspect the improvement within ten business days. If items remain which the Contractor must complete or remedy, perform the work immediately. When the Contractor corrects such items, the City will make final inspection. The work must pass final inspection before the City will accept it.

Upon final inspection and acceptance and receipt of record drawings, the Engineer will issue a certification stating that to the best of the Engineer's knowledge, information and belief, and on the basis of the Engineer's observations and inspections, the Work has been completed in accordance with terms and conditions of the Contract Documents, and will establish and notify the Contractor of the Final Completion date. The one-year repair and correction period will commence on the Final Completion date.

Contractor's maintenance responsibilities as noted in Section 105.14 end on the Final Completion date.

D. Correction and Repair Period. Remove, replace and/or repair at the Contractor's own expense and at the convenience of the City, any faulty, defective or improper work, materials or equipment discovered within one year from the date of Final Completion or for such longer period as the Contract Document may provide. Complete this correction and repair work within 30 days of the notification of faulty, defective or improper work.

The bond securing the Contract shall cover this one-year period.

Bear the cost of making good all work of separate Contractors destroyed or damaged by such correction.

Be responsible for handling replacement and installation of malfunctioning equipment and materials during the entire period that the equipment or material is covered by this Correction or Repair Period or the Manufacturer's guarantee, or any guarantees specified elsewhere in the Contract Documents, whichever is longer. This requirement includes delivery and installation of replacement equipment.

E. Finalization. Accept the final quantities as determined by the Engineer or provide a written notice indicating the reason for disagreement within 30 Calendar Days of receiving the Engineer's list of final quantities. If the City receives no notice of disagreement, then the final payment will be based on the Engineer's list of final quantities.

If the Contractor erroneously overestimates any items in any partial payment estimate, Contractor must correct such error in the statement of total cost, and the Contractor shall have no right to any such excess and shall not be entitled to any damage on account of such correction in the statement of total cost.

Supply all documents necessary for Project finalization within 60 Calendar Days from the Final Completion. These documents include:

1. Delinquent material certification.
2. Delinquent certified payrolls or required revised payrolls and utilization reports.
3. Warranties, operating/maintenance manuals and equipment list.
4. Completed form FHWA 47 on Federal-Aid projects over \$1,000,000 that are on the National Highway System, excluding beautification and railroad protective device projects (unless otherwise directed by the Engineer).
5. Agreement as to final quantities, including any delinquent force account records.
6. Form 66, from all Contractors and Subcontractors certifying that all payments have been made for all labor, material, equipment, and subcontracts. Material certificates from all material suppliers stating they have been paid in full.
7. Form 104 or Form 104F, from all Contractors and Subcontractors certifying that wages have been paid in accordance with the Prevailing Wages provisions set forth in the Contract.
8. Consent of Surety to Release Final Payment.
9. Any other documents the City deems necessary.

Failure to submit these acceptable completed documents will result in an administrative fee of \$100 per Calendar Day for every day that any of the required documents remain delinquent, starting 30 Calendar Days after receipt of written notification from the Engineer of a document deficiency.

F. Final Payment. City will make final payment after the Contractor achieves Final Completion and upon receipt of all Project Finalization Documents, and Contractor's Final Invoice.

G. Termination of City's Responsibility. No person, partnership, firm or corporation other than the Contractor shall have any interest in the Contract, and no claim shall be made or held valid, and neither the City nor its agents shall be held liable for, nor shall be held to pay any money except as herein provided. The acceptance by the Contractor of the final payment made as aforesaid shall operate as, and shall constitute, a release to the City and its agents from any claim or liability to the Contractor for anything done or furnished for, or relating to the work, or for any act or neglect of the City or any person related to or connected with the work.

The Contractor further agrees to relieve and hereby relieves and indemnifies and holds harmless the City from and against any and all liabilities, losses, judgments and claims of every nature and description by or on behalf of any person, firm, corporation, or other entity or governmental authority arising out of the performance of this Contract by said Contractor, the Contractor's officers, employees or agents.

The Contractor hereby relieves and indemnifies and holds harmless the City, its officers, employees, agents and servants from and against any claim or liability arising out of, from or based on the violation of any law, statute, ordinance or regulation by the Contractor, the Contractor's officers, servants, employees, or agents.

The Contractor indemnifies, protects, defends and saves the City harmless from all liabilities, judgments, costs, damages and expenses, which may in any way come against the City by reason of the use of any patented material, machinery, device, equipment or process the Contractor furnishes or uses in the performance of the work under the Contract, or by reason of the use of a patented design the Contractor furnishes and installs in the work.

In the event any claim, suit, or action at law, or inequity, of any kind whatsoever is made or brought against the City, the City shall have the right to retain from the money due or to become due to the Contractor any amount of money sufficient to protect itself against loss or judgment in the manner and upon the conditions as herein specified.

The Contractor pays all damages to real or personal property, or for any injury sustained by any person growing out of any act or deed of the Contractor, or the Contractor's agents and employees, that is in the nature of a legal liability, and protects and saves the City harmless against all suits and actions of every name and description brought against the City for, or on account of, any such injuries sustained by any person or persons caused by the Contractor, the Contractor's agents and employees in the execution of the work, or by or in consequence of any negligence in guarding the same, or by or on account of any omission or act of the Contractor, the Contractor's agents or employees, and the City will retain so much of the money due the Contractor under and by virtue of the Contract, as may be considered necessary to protect itself against loss and judgment until such suit or claim for damage shall have been settled, and the Contractor furnishes to the City satisfactory evidence to that effect.

The following section has been moved to 104.05:

110 Dispute Resolution and Administrative Claim Process